

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MEREDITH BUSER and ELLEN BUSER as Co-
Personal Representatives of the Estate of EUGENE L.
BUSER, and NANCY TUMPOSKY,

Plaintiffs,

v.

DESMOND T. BARRY, JR., THOMAS T. EGAN,
JOHN P. HEANUE, WILLIAM M. KELLY,
FRANCIS P. BARRON, and WINGED FOOT GOLF
CLUB, INC.,

Defendants.

WINGED FOOT HOLDING CORPORATION,

Nominal Defendant.

14 Civ. 4322 (NSR) (JCM)

**~~PROPOSED~~ FINAL ORDER
FOR VOLUNTARY
DISMISSAL OF CLAIMS
UNDER RULE 41(a)(2)**

WHEREAS, Plaintiffs' derivative claims on behalf of the Winged Foot Holding Corporation ("Holding Corp.") were partially dismissed by the Court's order dated March 12, 2019 (dkt. 227), as clarified by the Court's orders dated October 2 (dkt. 244) and December 18, 2019 (dkt. 329);

WHEREAS, Plaintiffs' claim for equitable dissolution of Holding Corp. was dismissed on abstention grounds, without prejudice to Plaintiffs' asserting the claim in a state court action, by the Court's order dated December 18, 2019 (dkt. 329);

WHEREAS, Plaintiffs sought permission pursuant to Rule 41(a)(2) to voluntarily dismiss their remaining derivative claims, relating to the lease between Holding Corp. and Winged Foot Golf Club for the period 2050-2071 (the "Remaining Claims"), with prejudice, in order to expeditiously appeal the Court's prior dismissal of Plaintiffs' other derivative claims;

WHEREAS, the Court on January 2, 2020 (dkt. 337) preliminarily approved Plaintiffs' proposed voluntary dismissal of the Remaining Claims with prejudice, subject to notice being provided to Holding Corp. shareholders pursuant to Rule 23.1 of the Federal Rules of Civil Procedure;

WHEREAS, the Court on January 28, 2020 (dkt. 344) approved a plan for notice to shareholders, pursuant to which a final approval hearing was scheduled for April 17, 2020, and Plaintiffs' counsel mailed written notice to shareholders advising them, *inter*

alia, of their right to appear at the hearing and to object to the proposed voluntary dismissal of claims; and


WHEREAS, because of the public health emergency regarding the COVID-19 virus, the originally scheduled final approval hearing was adjourned and rescheduled three times (*see* dkt. 346, 348, 355), with further notice being mailed to shareholders by Plaintiffs' counsel each time;

The matter having come on for hearing before the Court on October 8, 2020, with no shareholder objections having been made, and the Court having considered the papers and proceedings filed herein and the arguments made at the final approval hearing, and finding there to be good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. The distribution of notice to Holding Corp. shareholders pursuant to Rule 23.1, as provided for in the plan approved by the Court, constituted the best notice practicable under the circumstances, and met the requirements of due process under the United States Constitution and applicable state and federal law, and accordingly, based on the papers and proceedings in connection with the final approval hearing held on October 8, 2020, the Court finds that the actual notice to Holding Corp. shareholders was adequate.
2. The Court finds that no substantial prejudice to Defendants has been shown from Plaintiffs' proposed voluntary dismissal of the Remaining Claims with prejudice.
3. Final approval of Plaintiffs' proposed voluntary dismissal of the Remaining Claims with prejudice is granted, and accordingly, the Remaining Claims are dismissed with prejudice.
4. Final judgment shall be entered in this matter.

SO ORDERED.



Nelson S. Román, U.S.D.J.

DATED: October 14, 2020
White Plains, NY